

Message Text

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EXDIS - MILITARY ADDRESSEES HANDLE AS SPECAT EXCLUSIVE

E.O. 11652: GDS

TAGS: MILI, PFOR, TH

SUBJECT: U.S. RESIDUAL FORCES IN THAILAND

REFS: A) BANGKOK 6242; B) BANGKOK 6244; C) BANGKOK

6245

1. WE ARE ENCOURAGED BY THE RESULTS OF THE DIALOGUE
REPORTED IN THE REFTELS.

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2. TWO DETAILS STILL GIVE US SERIOUS PROBLEMS. FIRST IS THE INCLUSION OF A THREE-MONTH TIME LIMIT IN THE MEMORANDUM OF UNDERSTANDING WHICH IS TO ACCOMPANY PRINCIPLE SIX. WE AGREE WITH THE POSITION YOU TOOK WITH ANAN THAT NEGOTIATION OF A COMPLEX AGREEMENT OF THIS SORT MIGHT WELL TAKE MORE THAN THREE MONTHS (PARA 10 OF REF A). WE ALSO THINK THAT CONDUCTING DISCUSSIONS WITH SUCH A LIMIT IN EFFECT SMACKS OF NEGOTIATING UNDER DURESS. THAI-U.S. RELATIONS HAVE NOT BEEN CONDUCTED THIS WAY IN THE PAST, AND WE WOULD HOPE TO AVOID ANY SUCH OVERTONES IN THE FUTURE. WE COULD ACCEPT, FOR EXAMPLE, A FORMULATION ALONG THE LINES OF "AS RAPIDLY AS POSSIBLE". YOU MAY ASSURE THE THAI THAT WE INTEND TO NEGOTIATE IN GOOD FAITH WITH A VIEW TO REACHING AGREEMENT AS SOON AS POSSIBLE.

3. A FALLBACK POSITION ON THIS POINT COULD BE AS FOLLOWS: "THE THAI AND US GOVERNMENTS WILL ENTER INTO NEGOTIATIONS WITH A VIEW TO CONCLUDING WITHIN SIX MONTHS..." THIS WOULD PERMIT THE THAI TO CRITICIZE US SHOULD WE DRAG OUR FEET. AT THE SAME TIME, IT WOULD NOT BIND THE RTG PUBLICLY TO HAVING A COMPLETED AGREEMENT WITHIN SIX MONTHS SHOULD SUCH AN AGREEMENT PROVE TECHNICALLY IMPOSSIBLE TO NEGOTIATE. FURTHER, THIS FORMULATION WOULD ALLOW THE US TO SAY THAT SIX MONTHS WAS NOT AN ABSOLUTE DEADLINE IF THE RTG WAS ITSELF GUILTY OF OBSTRUCTING THE CONCLUSION OF A NEW AGREEMENT.

4. SECONDLY, THE CURRENT THAI DRAFT OF PRINCIPLE SIX GIVES US DIFFICULTY IN TWO RESPECTS: FIRST, THE TERM "PRIVILEGES AS ARE ACCORDED TO TECHNICAL EXPERTS FROM OTHER COUNTRIES" IS NOT A STANDARD THAT IS CLEAR OR CERTAIN TO US, AND WE BELIEVE, IN VIEW OF OUR SEVERE TIME CONSTRAINTS, THAT THE MATTER OF PRIVILEGES MUST BE LEFT TO THE NEGOTIATING PROCESS ITSELF. SECOND, THE CURRENT THAI DRAFT OF PRINCIPLE 6 WOULD LEAVE TO THE THAI THE DETERMINATION OF WHICH CASES INVOLVE OFFICIAL DUTY. THIS WOULD BE A MAJOR DEPARTURE FROM OUR PRACTICE

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ELSEWHERE AND FROM OUR GENERAL POLICY TO WHICH WE COULD NOT AGREE. WE WOULD THEREFORE PROPOSE THE FOLLOWING REVISION OF PRINCIPLE SIX: "THESE AUTHORIZED AMERICAN PERSONNEL SHALL ENJOY SUCH PRIVILEGES AND IMMUNITIES AS MAY BE NEGOTIATED AND MUTUALLY AGREED, INCLUDING IMMUNITY FROM CRIMINAL JURISDICTION REGARDING OFFENSES WHICH ARE COMMITTED IN THE EXERCISE OF THEIR OFFICIAL DUTIES AS DETERMINED BY MUTUALLY AGREED PROCEDURES." ALTERNATIVELY,

THE EMBASSY IS AUTHORIZED TO PROPOSE THE FIRST SENTENCE OF OUR FINAL FALLBACK AS PRINCIPLE SIX: "THE RTG AND USG WILL CONCLUDE AN AGREEMENT SPECIFYING THE PRIVILEGES AND IMMUNITIES TO BE ACCORDED TO US PERSONNEL CONNECTED WITH THE FACILITIES IN THAILAND." EITHER OF THESE FORMULATIONS WOULD, OF COURSE, HAVE TO BE COUPLED WITH THE MOU IMPLEMENTING PRINCIPLE SIX TO PROVIDE FOR THE STATUS OF ADMINISTRATIVE AND TECHNICAL STAFF OF EMBASSY PENDING NEGOTIATION OF A NEW AGREEMENT.

5. ACCORDINGLY, YOU SHOULD RAISE THESE POINTS WITH KHUKRIT. SINCE WE UNDERSTAND HE IS CAMPAIGNING IN THE NORTH AND SINCE WE ARE AWARE YOU HAVE BEEN INVITED TO CHIANG MAI TO SEE THE KING, IT SEEMS TO US THAT THERE MIGHT BE A CHANCE YOU COULD MEET BEFORE HE RETURNS TO

BANGKOK. IF THIS CANNOT BE DONE, OR IF A MEETING WITH KHUKRIT SEEMS UNLIKELY, THEN DCM MASTERS SHOULD PRESS THIS POINT WITH ANAN IN BANGKOK.

6. WE ALSO HAVE PROBLEMS, ALTHOUGH NOT AS SERIOUS, WITH THE FORMULATION OF PRINCIPLE SEVEN. IF ESSENTIAL, WE CAN LIVE WITH THE THREE-MONTH ABROGATION PROVISION, BUT WE WOULD STILL PREFER NOT TO HAVE A POSITIVE ACTION REQUIRED IN ORDER TO HAVE THE AGREEMENTS CONTINUE PAST TWO YEARS. WE RECOGNIZE, HOWEVER, THAT ANAN'S MAIN MOTIVE IS TO KEEP THE FOREIGN MINISTRY IN THE KEY POSITION AS FAR AS THAI FOREIGN RELATIONS IN GENERAL AND THAI-U.S. RELATIONS IN PARTICULAR ARE CONCERNED.

7. WE WOULD THUS LIKE YOU TO PROPOSE A FORMULA FOR
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PRINCIPLE SEVEN ALONG THESE LINES: "AGREEMENTS PERTAINING TO SUCH COOPERATION SHALL CONTINUE UNTIL TERMINATED. EITHER PARTY MAY TERMINATE THEM BY GIVING SIX MONTHS PRIOR NOTICE. THEY SHALL, HOWEVER, BE FORMALLY REVIEWED EVERY TWO YEARS TO SEE WHETHER THEY ARE IN ACCORD WITH CURRENT CIRCUMSTANCES."

8. WE NOTE THAT BY REPLACING "SPECIFIC AGREEMENTS" WITH "NEW AGREEMENTS" IN PRINCIPLE ONE, JUSMAG MIGHT BE CONSIDERED NO LONGER COVERED BY THE PRIVILEGES AND IMMUNITIES OF THE MAA. THIS MIGHT NOT BE A PROBLEM DURING THE HIATUS COVERED BY THE MOU SINCE "ADMINISTRATIVE AND TECHNICAL PERSONNEL" STATUS IS ESSENTIALLY EQUIVALENT TO MAA STATUS. THE ULTIMATE STATUS OF OUR RESIDUAL FORCES COULD, HOWEVER, BE INFERIOR TO THOSE OF THE MAA

IN SEVERAL RESPECTS. WE BELIEVE JUSMAG IS A DISTINCT ENTITY WHICH SHOULD HAVE THE PRIVILEGES AND IMMUNITIES OF THE MAA AND BELIEVE THE THAI DID NOT INTEND THAT ITS STATUS BE ALTERED. ACCORDINGLY, WE SUGGEST ADDING TO THE MOU THE FOLLOWING: "IT IS UNDERSTOOD THAT THIS MOU AND THE ACCOMPANYING GENERAL PRINCIPLES DO NOT AFFECT THE STATUS OF US MILITARY PERSONNEL PRESENT IN THAILAND IN CONNECTION WITH THE PROVISION OF MILITARY ASSISTANCE TO THAILAND, WHO SHALL CONTINUE TO BE GOVERNED BY ARTICLE VII OF THE MAA OF 1950".

9. FINALLY, PRINCIPLE TWO, WHILE OFFENSIVELY WORDED, CREATES NO SUBSTANTIVE DIFFICULTIES FOR US. WE WOULD PREFER A MORE POSITIVE FORMULATION SUCH AS "THESE FACILITIES AND PERSONNEL SHALL BE EMPLOYED IN A MANNER FULLY CONSISTENT WITH THE OBLIGATIONS OF THE PARTIES TO REFRAIN IN THEIR INTERNATIONAL RELATIONS FROM THE THREAT OR USE OF FORCE AGAINST THE TERRITORIAL INTEGRITY OR

POLITICAL INDEPENDENCE OF ANY STATE, IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS." HOWEVER, WE LEAVE TO THE EMBASSY'S DISCRETION WHETHER THIS CHANGE CAN BE ACHIEVED WITHOUT RISK TO OUR OBJECTIVES ON MORE SUBSTANTIVE ISSUES.

10. THE OTHER PRINCIPLES IN ANAN'S DRAFT SEEM ALL RIGHT
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TO US, AND YOU MAY SO INDICATE TO KHUKRIT OR ANAN.

11. IF YOU CAN GET SATISFACTION ON THE ABOVE POINTS, YOU MAY EXPRESS THE VIEW THAT THE REVISED PRINCIPLES PLUS THE MEMORANDUM OF UNDERSTANDING WILL CONSTITUTE AN ACCEPTABLE AGREEMENT BUT THAT YOU MUST REFER THE MATTER TO WASHINGTON. IF YOU CANNOT GET THIS SATISFACTION, YOU SHOULD SAY THAT YOU WILL HAVE TO ASK FOR FURTHER INSTRUCTIONS. KISSINGER

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